IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3559 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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JAGDISHBHAI ISHWARBHAI PATEL - Appellant(s)
Versus
BHAILALBHAI KASHIBHAI PATEL & 1 - Defendant(s)

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Appearance :

MR ARPIT A KAPADIA for Appellant(s) : 1,
NOTICE NOT RECD BACK for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MR YF MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/04/2007

ORAL JUDGMENT

1. Present Appeal has been filed by the appellant herein challenging the judgment and order

dated 29.06.2005 passed by the learned Presiding Officer and Additional Sessions Judge, 20th Fast Track Court, Vadodara in Civil Misc. Application No. 198 of 1986 whereby the learned Judge has been pleased to dismiss the said application and confirm the order passed by the Assistant Charity Commissioner in Inquiry No. 75 of 1980, which was confirmed by the Joint Charity Commissioner in Appeal No.11 of 1983.

2. Shri Arpit Kapadia, learned Advocate appearing on behalf of the appellant has taken this Court to the judgment and order passed by the learned Trial Court as well as Record and Proceedings, and the order passed by the Assistant Charity Commissioner passed in Inquiry No. 75 of 1980 as well as the order passed by the Joint Charity Commissioner in Appeal No. 11 of 1983. Considering all the judgments, this Court is of firm opinion that the appeal deserves to be dismissed as there are concurrent findings of facts by all the authorities/Courts' below and that; the learned Assistant Charity Commissioner after holding inquiry under the provisions of Bombay Public Trust Act; 1950, has held that the property of the Trust cannot

be said to be individual property but it was from the funds of village people. The appeal though is First Appeal, but considering the provisions of Bombay Public Trust Act; 1950, can be said to be Second Appeal and this Court is as such not required to re-appreciate evidence on record and even otherwise considering the order passed by the Assistant Charity Commissioner in Inquiry No. 75 of 1980, the order passed by the Joint Charity Commissioner in Appeal No. 11 of 1983 as well as the order passed by the Trial Court passed in Civil Misc. Application No. 198 of 1986, it cannot be said that there is any illegality committed by any of the Courts' below and/or the same is in any way contrary to the evidence on record. Hence, this appeal is dismissed. However, there shall be no order as to costs.

[M.R.Shah, J.]

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